IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 478 of 1998

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Appellant(s)
Versus
KULSUMBEN A AZIZKHAN & 4 - Defendant(s)

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Appearance :

MR YOGESH S LAKHANI for Appellant(s) : 1,
MR AJ YAGNIK for Defendant(s) : 1, 1.2.1, 1.2.2,1.2.3
NOTICE NOT RECD BACK for Defendant(s) : 5,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 01/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J. SHETHNA)

1. Appellant – Gujarat State Road Transport Corporation has challenged in this appeal the judgment and award dated 10.9.1997 passed by the Motor Accident Claims Tribunal, Jamnagar in Motor Accident Claim Petition No. 62/1993 filed by the original claimants – heirs of deceased Abdul Aziz Ibrahimkhan , whereby, the learned Tribunal awarded full claim of Rs. 3,00,000/- to the claimants with 12% interest on it.

2. It was vehemently urged by the learned counsel appearing for the appellant that deceased Abdul Aziz did not die in an accident which is alleged to have taken place in the early morning on 25.9.1992. On the basis of the evidence of one Dhirajlal Parmar, Exh. 35, driver of the bus, it was submitted that seeing the bus, the deceased cyclist lost his control and fell flat from his cycle and dashed with the pole nearby and, thereby, received injuries on his head. His evidence was rightly rejected by the learned Tribunal on the ground that it was never pleaded by the S.T. Corporation in its written statement Exh. 33. For the first time, in the Court, said Dhirajlal Parmar Exh. 35 deposed in his examination-in-chief that deceased cyclist lost his

balance and fell flat and dashed with the pole and, thereby, received injuries on his head. In his cross-examination, a suggestion was made to him that he was driving his bus with full speed and he bus knocked the deceased out. At least, he admitted the fact that criminal case for the same accident was registered against him.

3. Learned counsel for the claimants has taken us through the evidence of Kulsumben widow of deceased Abdul Aziz Ex. 24. She has clearly stated in her examination-in-chief that when her husband was going on his bi-cycle in the early morning on 25.9.1992, he was knocked out by the driver of the S.T. Bus. In her cross-examination, no such suggestion was put to her that S.T. Bus did not dash with the deceased cyclist. Only question was put regarding the treatment taken by the deceased in the hospital at Ahmedabad and Jamnagar. Her evidence regarding income that he was earning Rs. 2500/- per month at the time of accident while serving as a Fitter in the Woollen Mill and that he was also earning by way of cycle repairing work, was not at all challenged in the cross-examination. In fact, Kulsumben widow of deceased Abdul Aziz stated that she was getting family pension

of Rs. 950/- on the death of her husband.

4. In view of the above, first contention raised on behalf of the appellant – Corporation that deceased did not die in accident has to be rejected and, accordingly, it is rejected.

5. Second submission made by the learned counsel for the appellant – Corporation is that the claimants failed to lead evidence regarding income of the deceased. In that view of the matter, at the most, the Tribunal should have considered the monthly income of the deceased as Rs. 1500/- and deducting Rs. 500/- for his personal expenses, only Rs. 1000/- should have been considered as a monthly loss. This submission of learned counsel for the appellant has to be straightaway rejected in view of the fact that the evidence of widow of deceased Abdul Aziz that her husband was earning Rs. 2500/- per month as a fitter in Woollen Mill was not at all challenged in the cross-examination. In fact, there was no cross-examination on that point that she was getting family pension of Rs. 950/- per month on the death of her husband. In that view of the mater, it cannot be said that the learned Tribunal has wrongly considered Rs.

2050/- as monthly loss. In fact, considering the amount of Rs. 2050/- and applying multiplier of 16, the amount would comes to Rs. 3,93,600/-. In addition to it, the learned Tribunal awarded Rs. 20,000/- by way of loss of expectation of life and Rs. 10,000/- to the widow of the deceased. Thus, according to the learned Tribunal, the claimants were entitled to Rs. 4,23,600/-, but the claimants had claimed only Rs. 3,00,000/-, therefore, full claim was allowed. We may add to this that the evidence of Kulsumben widow of deceased that deceased has remained in hospital for a period of 13 months after accident before he died, was not at all challenged in her cross-examination. On that head also, the learned Tribunal should have awarded substantial amount for the pain, shock and suffering by the deceased Abdul Aziz. However, as stated earlier, the claim of the claimants was only Rs. 3,00,000/- and, therefore, though the claimants were entitled for more, learned Tribunal awarded only Rs. 3,00,000/-.

6. Under the circumstances, there is no question of interference with the impugned judgment and award passed by the learned Tribunal in this appeal. In view of the above discussion, this appeal fails and

is hereby dismissed with costs.

(B.J. SHETHNA, J.)

(H.B. ANTANI, J.)

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